

## CHAPTER EIGHT

### A TRUTH COMMISSION FOR UGANDA?

#### 8.1 Introduction

The Agreement on Accountability and Reconciliation recognises that a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed in its course is an essential ingredient for attaining reconciliation at all levels.<sup>1</sup> In this vein, the Agreement enjoins the parties to promote national legal arrangements to ensure justice and reconciliation in respect of the conflict.<sup>2</sup> Although a Truth Commission is not specifically mentioned, a survey carried out by the JLOS in 2008, found that overwhelmingly, Ugandans desire truth telling, reconciliation and reparations as part of a comprehensive solution to the conflict.<sup>3</sup>

The United Nations Principles to Combat Impunity (Joinet Principles)<sup>4</sup> provide that everyone have the inalienable right to know the truth about the circumstances and reasons that led to massive or systematic violations. It further provides that the full and effective exercise of this right, exploring the broader context of the conflict, provide a vital safeguard against the reoccurrence of violations.<sup>5</sup> Principle 5 further enjoins the state to take appropriate action including the creation of truth commissions or other commissions of inquiry to establish facts surrounding those violations so that the truth is ascertained and strategies for addressing the root causes are addressed. This right is elaborated as:

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<sup>1</sup> Agreement on Accountability and Reconciliation clause 2.3.

<sup>2</sup> Agreement on Accountability and Reconciliation clauses 5.1 & 5.2.

<sup>3</sup> JLOS *Transitional Justice in Northern Eastern Uganda & Some Parts of West Nile Region* (2009) 22 – 26 & 30.

<sup>4</sup> The set of Principles for Protection and Promotion of Human Rights Intended to Strengthen Action to Combat impunity UN Sub-Commission for Prevention of Discrimination and Protection of Minorities, 48<sup>th</sup> Sess., Annex II, Agenda Item 10 at 12, U.N Doc. E/CN.4/Sub.2/1996/18. 29 June 1996.

<sup>5</sup> Joinet Principles principle 2; truth is relative and it is not clear whether it comes out of the different accountability processes, including a truth commission but what is essential is that a truth telling process could help in creating 'official history' that would have been generated through a comprehensive process that involves mass participation of all sectors of society.

The right to know is not simply the right of any individual victim or closely related persons to know what happened - a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from reoccurring in the future. Its corollary is a “duty to remember” which the state must assume in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved.<sup>6</sup>

Truth commissions give a country the opportunity to confront it’s past, official denials and imposed silences, and provides victims with public validation of their suffering. It also makes the state’s obligation to provide integral reparations increasingly unquestionable.<sup>7</sup> Usually, victims are central in the work of truth commissions, and a lot of emphasis is put on their voices giving those who have been excluded, persecuted or/and stigmatised an opportunity to participate in public life and to have their suffering acknowledged.<sup>8</sup> Equally important, attention is paid to the institutions and sectors of society that formed the structure of power for the regimes where gross human rights violations and abuses were perpetrated to clearly identify why, how, what and where reforms are needed.<sup>9</sup>

A truth commission may well bridge the accountability gap that will be left by the other accountability measures in Uganda.<sup>10</sup> There are many features of the LRA conflict that would not be accomplished through the amnesty process, traditional justice or formal prosecutions. For instance an investigation into the various strategies and rationales that the government has followed in handling the LRA conflict that led to one of the world’s worst humanitarian crisis; an investigation into how and why both the LRA and UPDF

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<sup>6</sup> Revised Final Report on Question of Impunity of Perpetrators of Human Rights Violations, Prepared by Mr. Joinet pursuant to sub-commission Decision 1996/119, United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997, part A(17).

<sup>7</sup> S Cohen *States of Denial: Knowing about Atrocities and Suffering* (2001) 255 - 266.

<sup>8</sup> P Smith, ‘Memory without History: Who Owns Guatemala’s past?’ (2001) 24(2) *Washington Quarterly* 59 – 61 & 64.

<sup>9</sup> Smith (n 8 above) 64.

<sup>10</sup> The previous chapters, particularly chapter five and six established that prosecutions alone will not accomplish all aspects of accountability and will not be instrumental in ensuring truth and reparations in Uganda. Chapter four established that the Amnesty Act, granting a blanket amnesty, designed to put an end to hostilities has failed to bring out the truth and has become a divisive rather than a uniting factor for the rebels returning from the ‘bush’ and the affected communities. Chapter seven further concluded that traditional justice is best suited for use at the community level and it alone will not bring about meaningful accountability in Uganda.

involved children in the hostilities and atrocities committed by and against them during the conflict; an investigation into the different military offensive undertaken by the UPDF against the LRA and why they failed; an investigation into the various attempts at peace talks and the factors that led to their failure; and an investigation into abductions, disappearance, detention, torture, murder and other offences committed both by the LRA and the UPDF.<sup>11</sup> These investigations transcend individual perpetrators and put emphasis on the role of government institutions and voices of victims. In addition, the process will make recommendations aimed at addressing the root causes and outcomes of the conflict, thereby countering inequality in society and also identifying perpetrators and naming them individually. This will allow victims to pursue compensation against those identified through civil suits and will shame and bar such individuals from the position of public trust, thereby promoting justice. In addition, a truth commission would be best placed to recommend reparations for victims of the atrocities and legislative and institutional reform to ensure reconciliation and to prevent reoccurrence of violations.<sup>12</sup>

The Agreement on Accountability and Reconciliation provides for the widest possible consultations in order to receive views and concerns of all stakeholders<sup>13</sup> and to ensure the widest national ownership of all accountability and reconciliation processes.<sup>14</sup> In this vein, in 2008, JLOS started a process of nationwide consultations that is ongoing at the time of writing.<sup>15</sup> Civil society groups have also come up with a proposed National Reconciliation Bill of 2009 (working bill), which is still in a draft form and has not submitted for consideration by Parliament.<sup>16</sup> The drafters of the working bill have the option to submit the bill as a

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<sup>11</sup> C Rose, 'Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda: A Proposal for Truth Telling and Reparations', (2008) 28(2) *Third Worlds Law Journal* 371.

<sup>12</sup> The ICD will not award reparations to victims of atrocities and the ICC reparations regime will only come into play if indictees are arrested and tried. Further, only a limited number of victims stand to benefit from the process. In addition, the ICD and ICC for the moment are concentrating on crimes committed by the LRA only, so victims of crimes committed by the UPDF may not receive reparations – a truth and reconciliation commission could deal with these limitations.

<sup>13</sup> The stakeholders are highlighted to include state institutions, civil society, community leaders, traditional and religious leaders, academia and victims.

<sup>14</sup> Agreement on Accountability and Reconciliation clause 2.4.

<sup>15</sup> Interview with Rachel Odoi – Musoke, Senior Advisor with JLOS, conducted in Kampala on 12 Jan 2011.

<sup>16</sup> The Department of Peace and Conflict Studies, Makerere University together with the Refugee Law Project and other stakeholders prepared the proposed bill, it is still very much a working document and has not been finalised. Consultations with the civil society in Uganda is still ongoing and the drafters are trying to get as much civil society input as possible – telephone discussion with Lyandro Komakech, a researcher at the

private members bill, but have decided that it will have more weight if it is presented as a government bill. They are therefore lobbying cabinet, relevant ministries and judiciary to endorse the bill and present it to Parliament for debate.<sup>17</sup> This chapter recognises that the context in which each commission works is unique and so are political, social and legal factors that drive a particular conflict; demanding a tailored legislation that greatly accounts for its success. The chapter therefore, refers to the working bill, the only comprehensive working document in relation to a truth-telling process in Uganda.

If created, this will not be the first commission aimed at investigating human rights violations in Uganda. Uganda was the first African country to establish human rights investigative commission, though the work of the past commissions made little or no impact, and have virtually been forgotten. This chapter therefore gives an overview of the past two commissions mandated to investigate human rights violations in Uganda, which greatly informs the rest of the discussion on the appropriate legislation for the new commission. The chapter then discusses the appropriate form, structure and composition; powers and functions; jurisdiction; relationship with amnesty and formal prosecutions; provisions on reparations, reintegration and reconciliation, while paying close attention to the political, social and legal realities in Uganda and lessons learned from other states.

## **8.2 Past Investigative commissions in Uganda**

### **8.2.1 The 1974 Commission**

The first commission established in Uganda was the Commission of Inquiry into the Disappearance of People of Uganda, established in 1974 by President Idi Amin Dada. This was in response to pressure to investigate disappearances affected by Ugandan military

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Refugee Law Project on 3 November 2010. Provisions of the working bill is cited and annexed to this thesis with permission of Refugee Law Project. The version of the working bill referred to in this thesis is annexed and marked Annexure B.

<sup>17</sup> The February 2011 elections interfered and delayed this process that is back on track now; interview with Chris Dolan, Director of the Refugee Law Project conducted in Kampala on 18 Feb 2011. This process is working parallel to the nationwide consultations that JLOS is undertaking and it's very likely that JLOS will have a separate document at the end of consultations depending on their findings in the field (which may not differ much from the working bill). If this happens, then it is unlikely that Cabinet will endorse a private bill if another, drafted by a government institution is in place. Interview with Rachel Odoi-Musoke conducted on 12 January 2011 in Kampala.

since Amin came into power in January 1971.<sup>18</sup> A Presidential Decree established the Commission. It had the mandate to inquire into and establish the identity of persons who are alleged missing; to establish whether such persons are dead or alive; for people who fled Uganda, why they left; for the dead, the circumstances surrounding their death; those responsible for the disappearance or death and what should be done to them. It was further mandated to make recommendations on what should be done for the families of those missing or dead and what government should do to put an end to such disappearances.<sup>19</sup>

The Commission had a mandate to take evidence in person or by a written memorandum, in public or private from any member of the public but with a number of limitations on its powers. The limitations included the requirement that no investigations would be carried out on matters that may affect the security of the state.<sup>20</sup> The commission was composed of a Pakistani Judge as chair, two Ugandan police superintendents and a Ugandan army officer.<sup>21</sup> The Commission had the mandate to operate from 1 July 1974 and to hand in a report to the President by 30 September 1974.<sup>22</sup>

In fulfilment of its mandate, the Commission generally conducted public hearings; it heard 545 witnesses and documented 308 cases of disappearances. The Commission concluded that the Public Security Unit and the National Investigation Bureau bore the main responsibility for the disappearances. The report also indicated that army officers, military police and members of intelligence service were involved in many cases of disappearances. It recommended that the reform of the police and intelligence services and human rights trainings for government officials, among others.<sup>23</sup> The Commission's report was however, never made public and its recommendations never adopted by the government. Later the

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<sup>18</sup> Commission of Inquiry into Disappearance of People in Uganda since 25 January 1971, Legal Notice 2 of 1974 Cap 56 Laws of Uganda (Legal Notice 2, 1974); posted by USIP Library, available at Truth Commissions Digital Collection, Truth Commission in Uganda <http://www.usip.org/publicatios/truth-commission-uganda-74> (accessed 02 November 2010) annexed as Annexure C.

<sup>19</sup> Legal Notice 2, 1974 part II.

<sup>20</sup> Legal Notice 2, 1974 part III.

<sup>21</sup> Legal Notice 2, 1974 part I.

<sup>22</sup> Legal Notice 2, 1974 part I.

<sup>23</sup> PB Hayner 'Fifteen Truth Commissions – 1974 to 1994: A Comparative Study' (1994) 16(4) *Human Rights Quarterly* 612; Hayner makes reference to Richard Carver statement that the commission was successful in view of the practical difficulties it faced and highly unfavourable political climate under which it operated. See R Carver 'Called to Account: How African Government's Investigate Human Rights Violations (1990) 89 *African Affairs* 399.

four commissioners were targeted by the state because of their work and this inquiry did nothing to stop the brutality and human rights violations that characterised Idi Amin's eight-year rule in Uganda.<sup>24</sup>

The 1974 Commission has been discredited and its entire operations viewed as a waste of time. Yet, some commentators have argued that the Commission played an important role in establishing historical records, and have pointed out that during its operations, the number of disappearances decreased, at least in the short term.<sup>25</sup> Nonetheless, the Commission's work failed to deter future violations as it was clearly set up without a political will or a commitment to reforms. The 1974 Commission is discounted in history and no reference was made to it in setting up Uganda's second commission of inquiry in 1986, twelve years later.<sup>26</sup>

### **8.2.2 The 1986 Commission**

In 1986, President Museveni seized control of the government after nearly six years of guerrilla warfare. As the basic tenets of his philosophy to rebuild the nation, the President outlined a ten-point programme in which he emphasised democracy, security, national unity, independence, restoration and rehabilitation of social services, end to corruption and misuse of power, solutions for displaced people, pan-African cooperation and pursuing a mixed economy.<sup>27</sup> In pursuit of these goals, President Museveni established, among other institutions, a commission of inquiry, to address human rights violations that had been perpetrated by the past regimes - the Commission of Inquiry into Violations of Human Rights (1986 Commission).<sup>28</sup> The 1986 Commission was received with enthusiasm and in the early days perceived as a tool to usher in a new era of respect of human rights in Uganda.<sup>29</sup>

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<sup>24</sup> Hayner (n 23 above) 612; in particular, the Pakistani judge lost his job with the government; one of the Ugandan commissioners was framed with murder and sentenced to death and another fled Uganda to avoid arrest.

<sup>25</sup> Carver (n 23 above) 400.

<sup>26</sup> Hayner (n 23 above) 613.

<sup>27</sup> YK. Museveni, 'Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda' (1997) 217.

<sup>28</sup> 'Legal Notice Creating the Commission of Inquiry into violations of Human Rights, Commission of Inquiry Act, Legal Notice No 5 (May 16 1986) Cap 56 laws of Uganda ( Legal Notice 5, 1986); copy annexed as Annexure D.

<sup>29</sup> Hayner (n 23 above) 612; referring to Amnesty International Report 'Uganda: Human Rights Watch, 1986 – 1989' 1; indicating that the government immediately moved to ratify international human rights instruments

The Commission had a broad mandate that included inquiry into all aspects of all human rights violations, breaches in the rule of law, and excessive abuse of power committed in Uganda by the previous governments. The Commission had a further mandate to look into possible ways of preventing recurrence of such violations, powers to hear direct evidence, subpoena witnesses and request for documents from official sources. Temporal jurisdiction was from 9 October 1962, when Uganda attained its independence to 26 January 1986 when President Museveni took power in a coup.<sup>30</sup> The Commission comprised of six members, male and was chaired by the then Uganda Chief Justice - Arthur Oder.<sup>31</sup>

The Commission conducted public hearings, live television and radio broadcasts, generating popular support<sup>32</sup> but after several years of operation, with no end in sight, the public interest in its work waned.<sup>33</sup> The Final Report of the Commission came out in 1994, but the report was not widely distributed. The commissioners also remained silent about their work, which remains virtually unknown.<sup>34</sup> In its final report, the 1986 Commission reportedly made precise proposals for change. These include, suggestions to repeal laws that allowed for detention without trial; human rights education in schools and training programs for the army and security forces; constitutional guarantees and fulfilment of international treaty obligations; prosecution of those found in violation of human rights; and the need for reform in military and security sectors. The government has implemented very few of the recommendations.<sup>35</sup>

Some of the challenges of the 1986 Commission included its very broad and vague mandate as it was burdened with the task of sifting through and collecting testimony of nearly 25

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and to introduce domestic safeguards against human rights violations indicating that it is standards by which it wished to be judged by the community of nations. See also JR Quinn 'Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile' (2001) 23(4) *Netherlands Quarterly of Human Rights* 391.

<sup>30</sup> Legal Notice 5 1986, para 3.

<sup>31</sup> JR Quinn 'Constraints: The Un-Doing of the Ugandan Truth Commission' (2004) 26(2) *Human Rights Quarterly* 409; after several years of operation, a female commissioner was appointed to the Commission.

<sup>32</sup> Rose (n 11 above) 363.

<sup>33</sup> Though the Legal Notice instructed the Commission to perform its work in a speedy manner and present a report in the shortest time possible, no cut off date within which to complete work and present a report was indicated.

<sup>34</sup> JR Quinn, 'The Politics of Acknowledgement: An Analysis of Uganda's Truth Commission' (2003) 19 *York Centre for International and Security Studies* 20; Quinn (n 31 above) 407.

<sup>35</sup> Quinn (n 34 above) 9; Quinn (31 above) 412.



years of abuses under different regimes with different perpetrators and victims.<sup>36</sup> The Commission also faced major financial constraints, with work coming to a standstill every couple of months, regional trips cancelled repeatedly due to lack of funds and after years of operation, the public interest in its work faded.<sup>37</sup> The 1986 Commission has been discredited as a tool used by President Museveni's government to discredit previous regime and legitimise his rule.<sup>38</sup>

The past two commissions in Uganda were developed out of very different political realities, focused on different but overlapping periods, and both were largely unsuccessful in their endeavours.<sup>39</sup> The failures thereof highlight the potential challenges that a new truth commission for Uganda may face. This, together with the prevailing political and social conditions is taken into consideration in the discussion that follows. The discussion also benefits from the numerous truth commission experiences in countries such as South Africa, Sierra Leone, East Timor, Peru and Liberia to draw potentially useful lessons.

### **8.3 Features of a new truth commission**

#### **8.3.1 Form, structure and composition**

The working bill provides that the new truth commission should be composed of different forums to operate on a national and regional level with support from existing institutions including the Human Rights Commission, local government and traditional justice institutions.<sup>40</sup> The forum is to be composed of thirteen members, all Ugandans,<sup>41</sup> with no

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<sup>36</sup> Quinn (n 34 above) 5.

<sup>37</sup> Hayner (n 23 above) 618; the Commission had a financial downturn in 1987, the Ford Foundation and other International donors made contribution but the financial crisis followed the commission throughout its work.

<sup>38</sup> According to Frank Onapito Ekomoliot, the former Presidential Press Secretary and a prominent journalist in Uganda, interviewed on 14 January 2011 in Kampala; at the time, there was a need for President Museveni to change his image from a rag tag bush fighter to a political leader and the 1986 Commission was a strategy to gain credibility and legitimise his rule.

<sup>39</sup> As previously discussed, the 1974 Commission failed due to lack of a political will and commitment to reform; the 1986 Commission failed due to its broad mandate that proved difficult to manage and lack of political commitment to make funds available to the commission in a timely manner.

<sup>40</sup> Working bill part II(B).

<sup>41</sup> An earlier draft of the bill provided for a mixed national and international composition but this provision was amended in this later draft because members of the public favoured a purely national composition. Guatemala and Sierra Leone both had mixed tribunals, which have been attributed to their success. Advantages put forward for mixed commissions include the fact that foreign members usually have experience from other



less than seven women. A member is to be appointed from the existing Amnesty Commission and another from the Human Rights Commission and others from the academia, civil society and the four regions of Uganda.<sup>42</sup>

Selection criteria used for selecting members determines the quality, credibility and success of any accountability measure and is very important for a truth commission. The working bill gives this role to a five member 'selection committee', two of whom shall be women, with the composition that reflects a regional balance and comprises of highly qualified persons of integrity drawn from the academia, civil society, faith based institutions and cultural institutions among others. The members of the Selection Committee are to be appointed by Parliament.<sup>43</sup>

Forum candidates are to be nominated by the public<sup>44</sup> and members selected by the Selection Committee and approved by Parliament.<sup>45</sup> Criteria for selection are; high moral character, proven integrity, and persons trusted to remain impartial to functions of a truth commission.<sup>46</sup> The process provided for in the working bill if followed, will ensure local ownership, credibility and legitimacy of the members of the forum, which is desirable for the success of the process. The drafters of the working bill are evidently conscious of Uganda's history – regional and gender marginalisation and therefore see the need for regional and gender balance to give credibility to the forum.

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countries that the commission can draw from and helps enrich the process and that where the credibility of nationals is questioned, the presence of foreign members can to some extent give the public confidence in the process. There is however, nothing to suggest that the purely national composition of the 1986 Commission contributed to its failure. In addition, Prof Henrietta Mensa-Bonsu, a former commissioner in Ghana and Liberia suggests that if persons with the requisite credentials exist in Uganda appointing nationals with the support of internationals at the technical level, may be the best way to go, the most important thing is the desire of Ugandans (Interview conducted via email on 28 March 2011). See also Judge Thomas Buergenthal, Lecture given on 17 October 2006 at Western Reserve University School of Law, 'Truth Commissions: Between Impunity and Prosecution' *Transcript of the Frederick K. Cox International Law Centre, Lecture in Global Legal Reform*.

<sup>42</sup> Working bill part IV(B).

<sup>43</sup> Working bill part IV(A)(1).

<sup>44</sup> The working bill does not clarify how the public nomination shall be done, this needs to be clearly spelled out to ensure that persons nominated meet the necessary criteria and are representative of the people.

<sup>45</sup> Working bill part IV(B).

<sup>46</sup> Working bill part IV(C).

The working bill seeks to establish committees as part of the forum; committees proposed include an ‘amnesty committee’ comprising of five members chaired by a member of the forum; the other four members need not be members, and are appointed by a chairperson on consultations with other members of the forum.<sup>47</sup> This committee shall have the power to receive amnesty application and shall grant or deny amnesty.<sup>48</sup> The working bill also seeks to create an ‘investigation committee’ composed of three members appointed by the chairperson with approval of other members of the forum. This committee too, is to be chaired by a member of the forum and the other two members need not be members but must have specialised knowledge in investigating complex societal and criminal conflicts.<sup>49</sup> This structure, though modelled on the South African truth commission differs in that these ‘committees’ do not constitute the forum and general investigations into human rights violations, reparations and rehabilitation are carried out as the main forum activities.

### **8.3.2 Powers and functions**

The working bill seeks to empower the truth commission with powers to hold hearings; take statements; summon witnesses; conduct searches and seize relevant documents; issue warrants; preserve documents; determine eligibility and grant or deny amnesty; conduct investigations including exhumations and forensic examinations; identify perpetrators and issue a final report and recommendations.<sup>50</sup> This list is inclusive and not exhaustive and gives the truth commission all powers reasonable and necessary to carry out its mandate but that, as the history of truth commissions in Uganda has shown, must be backed up by political will to make the necessary resources available and to give room within which a commission can exercise the powers.

The question therefore is how likely will individuals with state authority and security institutions give room to a new truth commission to exercise its powers and publicly question their conduct, with a looming threat of prosecutions? Uganda clearly departs from

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<sup>47</sup> Working bill part IV(H).

<sup>48</sup> Working bill part IV(H)(3).

<sup>49</sup> Working bill part IV(I).

<sup>50</sup> Working bill part II(C)(1).

‘transitional justice’ paradigm, as there is no regime change, certainly not in the traditional sense. The NRM government has been in power for the last twenty-five years and in February 2011 won elections for another five-year term as Uganda prepares to undertake accountability measures with its apparent blessings and goodwill. Will these blessings, goodwill and cooperation be guaranteed to allow a commission to honestly deal with past abuses and violations to allow reform and accountability? Will the NRM government accept that its rule has been tarnished by decades of conflict and that state and security institutions are in need of reform? On the other hand, will the government set its sight to justifying policies, hiding complicity and rejecting blame?

A new truth commission in Uganda will have to work against these odds. Cooperation of the state and a political will is crucial to avoid the repeat of the 1974 and 1986 commissions’ experience that did not yield much benefit. For instance, after the 1974 inquiry, the Amin’s government became more repressive than ever.<sup>51</sup> In addition, during the 1986 commission’s inquiry, files, audio and video recordings disappeared. Though some commissioners reportedly suggested that the disappearance of evidence was merely due to sloppy archival and storage techniques, others have speculated that commissioners and other people who worked with the Commission had purposely destroyed evidence that would implicate them or their friends and family in heinous crimes. This indicates that perhaps the NRM government is unable and/or unwilling to tolerate attempts to delve into the issues of the past.<sup>52</sup>

The working bill proposes a three months preparation period upon establishment within which to facilitate activities necessary for the commencement of core activities of the forum.<sup>53</sup> These activities include determining operation guidelines and procedures, recruitment and training of staff; designing a witness protection mechanism; designing work schedules, work plans and code of conduct;<sup>54</sup> not forgetting designing a robust outreach programme that will be necessary to ensure local ownership and participation. The author is

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<sup>51</sup> Hayner (n 23 above) 612.

<sup>52</sup> Quinn (n 31 above) 413; the Commission was further not allowed to look into human rights abuses perpetrated by the NRA before it took over power in 1986; yet reports indicated that the rebel group committed a lot of atrocities against civilian in Luwero Triangle.

<sup>53</sup> Working bill part II(D).

<sup>54</sup> Working bill part II(D).

of the view that considering the length of the period the truth commission is to investigate; the level of atrocities; the state of the roads, media and other infrastructure that it will rely on for its activities - three months is such a short time for members come up with credible, comprehensive, integrated and visible programmes and procedures. Sufficient preparation time should therefore be accorded to a truth commission in the founding legislation.

Of particular concern is design of a witness protection programme that the working bill leaves to members of the commission. This will be a very delicate undertaking, which will require a lot of technical expertise, funds, research and attention to detail. It is necessary to draw attention to the fact that the LRA conflict has not yet ended and the LRA very much remains a threat to the people who are conscious of this fact.<sup>55</sup> The LRA to exert terrible atrocities on people whom they believe have 'sold them out.' This fear of revenge is one reason that provoked outcry from the victim populations when the ICC first started investigations.<sup>56</sup> It will naturally follow that many people may be afraid to give statements to a truth telling institution unless guaranteed adequate protection.

In addition, the populace may be concerned about giving testimony implicating security institutions, including the army and other government officials who may have state backing, means and the ability to intimidate or harm them. Intimidation is a method that has widely been employed by the government of Uganda and security personnel to disquiet opposition.<sup>57</sup> Top military personnel, and sometimes politicians in President Museveni's government, have given every indication that they do not take kindly to accusation of wrongdoing by security forces or politicians right from the time when the ICC started its

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<sup>55</sup> However, there has been no hostility in Uganda since 2006 after the commencement of the Juba peace process although the LRA remain active, perpetrating atrocities in Sudan, the DRC and Central African Republic and still very much a threat to the populace in Uganda. Phase out of IDP camps in Northern Uganda has been a very slow process as the populace are not sure if this is really the end of hostilities and are well aware that the LRA remain a force to be reckoned with.

<sup>56</sup> Informal discussion with a group of eight youth in Gulu town on 10 Aug 2010.

<sup>57</sup> For example in 2004, when the high court granted bail to Kizza Besigye, the main opposition leader and other nine suspects facing terrorism and treason charges; security forces besieged the court, re-arrested and new proceedings were instituted in a court martial in complete disregard of the court's ruling. More recently, several opposition leaders were tortured and arrested by police officer as they conducted a peaceful protest, 'walk to work protest' to highlight the escalating standard of living in Uganda – generally see headlines in the New Vision and Daily Monitor Newspapers between 8 to 30 April 2011.

investigations in Uganda.<sup>58</sup> As a result, representatives of a truth telling institution will have to come up with sound measures to protect those willing to talk and encourage those reluctant to do so.

An important protection measure will be confidentiality guarantees including clandestine meetings with witnesses that could be arranged outside the institution premises; concealing to the public the identity of the person giving testimony through private hearings; and the use of pseudonym and deletion of identifying information from public records. Specialists may periodically have to check offices for hidden microphones, as was the case in El Salvador.<sup>59</sup> It is also important that independent legal service be provided for individuals with concerns on confidentiality before they give testimony to the truth commission.<sup>60</sup> The Commission should also ensure that it reaches agreements with other governments to resettle some witnesses in extreme cases where the life of such a witness and/or their family members may be at risk. This will especially be applicable if such a witness is also required to give evidence in judicial processes.

The working bill, in addition, proposes that commencing with the preparation period, the commission shall have five years within which to receive matters and will conclude all pending matters within six months of the end of the five-year filing period. The commission shall have a further one year beyond the end of the filing period to write and publicise its reports to Ugandans.<sup>61</sup> Provisions are made for the extension of the truth commission's mandate for additional three months at a time by resolution of Parliament.<sup>62</sup> This time limitation is sufficient and may well contribute to the success of the institution. The appointed members should however remain conscious of the history of the 1986 Commission; it was hoped that the work of the Commission would be completed within a

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<sup>58</sup> 'UPDF Spokesman: Ignore Human Rights Watch Report on UPDF' Uganda Genocide 30 July 2008; the UPDF spokesman was referring to a report that Human Rights Watch documented on atrocities allegedly committed by the UPDF <http://ugandagenocide.info/?p=163> (accessed on 18 Nov 2010); Human Rights Watch Report, 'ICC: Investigate Both Sides in Uganda', (4 Feb 2004) <http://www.hrw.org/en/news/2004/02/04/icc-investigate-all-sides-uganda> (accessed 18 Nov 2010).

<sup>59</sup> Judge Thomas Buergenthal (n 41 above).

<sup>60</sup> This role can be played by existing legal aid providers in Uganda for example the Legal Aid Clinic of the Law Development Centre, the Uganda Legal Aid Clinic and the Norwegian Refugee Council Legal Assistance Programme.

<sup>61</sup> Working bill part II(D).

<sup>62</sup> Working bill part II(E).

period of three years, although this was not clearly spelled out in the founding legislation. However, the Commission only tabled its final report eight years after it began operations. By this time some of the evidence which had existed either disappeared or was damaged; some of those who might have testified as either victims or perpetrators either died or moved to other countries; many of the events were lost to the ravages of time and memory<sup>63</sup> and most importantly, public interest in its work had waned.<sup>64</sup> A new truth commission should not be caught up in this trap.

### 8.3.3 Temporal and material jurisdiction

The working bill proposes that the temporal Jurisdiction of a new truth commission be 9 October 1962 when Uganda attained independence to the date of assent of the new legislation.<sup>65</sup> This raises a few issues of practical concern - for instance, how the commission will be able to finish its work in a timely manner if it has to sift through evidence of almost 50 years. As discussed previously, one major reason for the failure of the 1986 Commission was the attempt to unveil 25 years of atrocities, under different regimes, with different groups of perpetrators and victims. In addition, what 'truth' can a new truth commission reasonably uncover that the 1986 Commission failed to unearth in the eight years of its existence?<sup>66</sup> There is also the worry that digging up the past through such a comprehensive process would only serve to inflame the situation by rehashing old quarrels and reopening wounds.<sup>67</sup> Many people have the desire to move on and not to be dragged to the past repeatedly, especially so, that nothing much came out of the 1986 Commission process.<sup>68</sup>

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<sup>63</sup> Quinn (n 34 above) 22.

<sup>64</sup> Quinn (31 above) 409.

<sup>65</sup> Working bill part III(A).

<sup>66</sup> Quinn (n 34 above) 20 – 21; stating that during the operation of the CIVHR, thousands of people filled questionnaires with regard to their recollection of events that had occurred in the past and many of which were then investigated in the field. At least 608 witnesses appeared before the CIVHR and that the CIVHR travelled to virtually every region of the country holding hearings and collecting testimonies. These testimonies are bound into 18 enormous volumes that are available at the Uganda Human Rights Commission's offices. The final report is 720 pages and contains testimony, analysis and recommendations, along with a list of names of those subjected to torture and abuse. What is the chance that these people will want to go through such a comprehensive process again? Although nothing much came out the inquiry, at least the information collected is still available for reference for a new commission.

<sup>67</sup> Interview with Frank Onapito Ekomoliot conducted on 14 January 2011 in Kampala; this sentiment has been echoed by a number of Ugandans who do not clearly understand the difference a new truth commission will make in regard to 'truth' of what happened in the past – some have even suggested that going far back may

Valid as these questions may be, there are still people in Uganda who feel that their rights were violated in the period after independence and there may be fresh evidence or information on violations that occurred in the period probed by the 1986 commission. These people may have the desire to be heard and may feel more confident to talk now, than they did back then; doors should not be shut on them or any other new evidence that may be available. In addition, there remains a need to comprehensively question and understand the root cause of conflicts in Uganda since independence for the Ugandan society to begin to form relationships, participate in social and civic structures of society to defeat the deep rooted division that have paralysed the nation since independence.<sup>69</sup> To achieve this, an investigation into events, even prior to independence<sup>70</sup> is inevitable. Very important is also that the new truth commission does not get caught up in debates of the past but spend sufficient time investigating the events that caused great suffering in the recent history of Uganda.

To this end, the author suggests the establishment of another committee, ‘a historical clarification and analysis committee’ with the sole responsibility of creating an independent and objective historical record. This committee would examine the underlying causes, nature, extent and manifestations of all conflicts in Uganda since independence; and the nature, causes extend and manifestations of the north-south divide in the country with the aim of generating an ‘official history’ that includes abuses and violations perpetrated and recommending reforms in state institutions.<sup>71</sup> Evidence collected by the 1986 Commission would be an important point of reference to this committee that would also review recommendations of the 1986 Commission, adopt or modify them as necessary.

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derail the matter at hand – the abuses and violations perpetrated in the LRA conflicts with wounds still visible and suffering ongoing.

<sup>68</sup> Quinn (31 above) 412.

<sup>69</sup> Quinn (n 34 above) 22.

<sup>70</sup> The necessity of an historical analysis is recognised in clause 3.2 of the Agreement on Accountability and Reconciliation.

<sup>71</sup> Agreement on Accountability and Reconciliation clause 3.2 recognises the need for historical analysis and clarification; Uganda’s history since independence has been largely dominated by coups and other insurgencies all characterised by gross human rights violations and abuse, the LRA conflict is the longest running one. Several other insurgencies cropped up since 1986 when President Museveni took over power and according to him, in the 2011 presidential campaigns, the NRM quelled 32 insurgencies, many of which, Ugandans do not seem to know about.



The working bill, broadly defines the subject matter jurisdiction as:

Considering and analysing any matter relevant to violent conflicts and to widespread or systematic violations or abuses of human rights including their history, facilitating and directing, and/or initiating enquiries into manifestation of conflicts including human rights violations and abuses, documenting such violations and abuses, determining motives and patterns, gathering and receiving evidence of violations and abuses, determining who can file complaints restoring the human dignity of victims by giving them the opportunity to tell their stories and the acknowledgment by perpetrators, adopting its own rules and procedures, designing witness protection mechanism, coordinating its activities with the Amnesty commission and the Human Rights Commission, referring cases to traditional cultural institutions, referring cases to alternative justice and reconciliation mechanism, preparing reports, creating an independent and objective historical record, making recommendations on the appropriate mechanisms of reconciliation, reintegration, reparations and rehabilitation measures to victims, initiating legal, institutional and other reforms and designing and conducting symbolic reconciliation activities.<sup>72</sup>

The working bill, in the same part, spells out the manner in which a new commission may carry out its functions.<sup>73</sup> The scope, size, subject matter and operations in the working bill are largely undetermined. Pertinent issues like witness protection programmes and relationship with existing commissions, is left for members to determine. As so often happens in the establishment of truth commissions, this sweeping mandate may prove difficult to manage<sup>74</sup> and therefore needs revision.

In addition, the mandate of a new truth commission should clearly spell out gender and child rights issues. Experiences of children and women must be examined in detail and enough attention given to their participation and protection. The LRA conflict involved a large scale use of children as soldiers; in addition, the other atrocities committed like abductions, sexual violence, massive population displacement, disruption of education and health services, affected mostly children and men and women were affected differently. A

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<sup>72</sup> Working bill part III.

<sup>73</sup> Working bill part III.

<sup>74</sup> Quinn (n 34 above) 7 referring to C Tomuschatt, 'Clarification Commission in Guatemala', (2000) 23(2) *Human Rights Quarterly* 239 – 240

truth commission must therefore give a great focus to the experiences of women and children and impacts of the multiple levels of violations against them both as direct and indirect victims of the conflict.

The only reference in the working bill to women and children is that ‘particular attention to the experiences of women and children and other vulnerable groups should be made.’<sup>75</sup> The founding legislation could go further than that in clarity. For example, the Liberian Truth and Reconciliation Act,<sup>76</sup> goes furthest to set the stage for a concerted effort both to focus on the impacts of the conflict on children and women and to them in its activities.<sup>77</sup> In its mandate, the Act provides for specific mechanism and procedures to address the experiences of women, children and other vulnerable groups. It urges the commissioners to pay particular attention to gender based violations and issues of child soldiers.<sup>78</sup>

The Liberian Act further provides that the truth commission should take into account the security and other interests of women, children and other vulnerable groups and design a witness protection measure on a case-by-case basis as well include special programs for the group.<sup>79</sup> The Act further mandated the commission to employ specialists in children and women’s rights and to ensure that special measures are employed that will enable them provide testimony, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery.<sup>80</sup>

The clear articulation of children and women’s important role in the mandate, operation and outcomes of the truth commission and the call for policies, procedures and operational concerns to secure their safe involvement in its work were significant achievements of the Liberian truth commission. These provisions raised new challenges and responsibilities requiring human and financial resources, as well as a sustained commitment by the

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<sup>75</sup> Working bill part III(B)(1)(a).

<sup>76</sup> An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, Enacted by the National Transitional Legislative Assembly on 12 May 2005.

<sup>77</sup> Liberia TRC Act art IV(4); art VI(24); and art VII(26) (n) and (o).

<sup>78</sup> Liberia TRC Act art IV(4)(e).

<sup>79</sup> Liberia TRC Act art IV(26)(n).

<sup>80</sup> Liberia TRC Act art IV(26)(o).

Commission to consider the safety and participation children and women,<sup>81</sup> the usually forgotten victims of human rights violations and abuses in accountability processes.

At the broader level, a truth telling process should bear in mind that victims of the LRA conflict have not been given a central position in all the other measures in operation that puts more emphasis on perpetrators and their needs.<sup>82</sup> The founding legislation must therefore ensure that it creates an institution that will be open and responsive to the needs of victims and recognise the value of their experience and truly restore their dignity as humans and promote their role in nation building. To be able to do this, the institution must ensure that it reaches all victims in the furthest corner of the country and abroad. It must therefore establish its presence across the country ensuring that regional teams have adequate logistical support including transport and communication facilities that is critical to their work.<sup>83</sup>

#### **8.4 Relationship with the Amnesty Act**

The working bill seeks to create an Amnesty Committee with powers to consider applications for the grant of amnesty.<sup>84</sup> Like the South African TRC, the Amnesty committee, is empowered to grant amnesty in respect of those acts, omissions or offences for which the applicant has made full disclosure.<sup>85</sup> It is further provided that the Amnesty Committee shall have no jurisdiction to admit for hearing and grant of amnesty to persons who may have committed crimes that falls within the jurisdiction of the ICD until such a time, as the DPP

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<sup>81</sup> T Sowa 'Children and the Liberian Truth and Reconciliation Commission' in S Pamar et al., (eds) *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation* (2010) 198.

<sup>82</sup> For example the Amnesty Act and Commission put more emphasis on the needs of perpetrators as discussed in the previous chapter and in formal prosecutors as discussed in chapter 3 and 4, the most likely role victims will have is that of witnesses and they will not have a platform to narrate their experiences and have them acknowledged.

<sup>83</sup> Hayner (n 23 above) 600; states that many truth commissions are limited by mandate, political constraints, restricted access to information or by lack of resources including logistical, human and financial challenges that are the determining factors to the work of truth commission; Quinn (n 31 above) 414; further states that the 1986 commission faced chronic shortages in transportation to and from hearings outside Kampala, and also in stationary that sometimes the Commissioners were forced to ask those who had come to give testimony to provide their own paper and pen in order for the testimony to be recorded.

<sup>84</sup> Working bill part IV(H) & part V(B).

<sup>85</sup> Working bill part V(B)(b).

shall advise that it shall not prosecute such a person.<sup>86</sup> This step ensures accountability of those who will receive amnesty. For the sake of continuity and to show commitment to its policies and laws, the founding legislation should not unilaterally revoke amnesty already granted, as this could lead to loss of faith in the government by the general public and doubts on the seriousness of accountability pursuits, that it is undertaking.<sup>87</sup> However, the legislation must spell out that even those already granted amnesty must cooperate and give testimony to a truth commission without fear of implicating themselves, as criminal proceedings will not be instituted against them.<sup>88</sup>

### **8.5 Relationship with formal prosecutions**

Unlike most transitional states that opt for either prosecutions or truth telling processes, Uganda is considering prosecutions and truth telling processes as complementary accountability measures. The work of a truth commission will no doubt overlap with that of the ICD and the ICC as they have similar objectives such as ensuring accountability and preventing reoccurrence though the means used to achieve this end may differ. The co-existence in Sierra Leone of the Truth and Reconciliation Commission (TRC) and Special Court for Sierra Leone (SCSL) is especially instructive for Uganda. The use of these two options in Sierra Leone represents a unique and unprecedented experiment and most importantly demonstrates some of the tensions that the different measures are likely to face as well as the feasibility of their coexistence.<sup>89</sup>

The SCSL had the mandate to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.<sup>90</sup> While the TRC had the mandate to look into human rights violations from, 23 March 1991 when the conflict in Sierra Leone

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<sup>86</sup> Working bill part V(A)(1).

<sup>87</sup> See further discussion in chapter four and six of the thesis.

<sup>88</sup> This was the case in Sierra Leone, where the TRC took testimonies from several perpetrators granted amnesty under the Lomé Accord.

<sup>89</sup> WA Schabas, 'Truth Commissions and Courts Working in Parallel: The Sierra Leone Experience' (2004) 98 *American Society of International Law* 198.

<sup>90</sup> Statute of the Special Court for Sierra Leone art 1(1).

began to the signing of the Lomé Peace Agreement on 7 July 1999.<sup>91</sup> The two Institutions never came to a formal agreement on how they would cooperate; they instead exercised respectful relations with each other.<sup>92</sup>

According to William Schabas, one of the commissioners for the TRC in Sierra Leone, concerns about overlapping mandates and jurisdictions did not actually play out in any significant way as the day-to-day work of the TRC and the Court shared little common ground. He adds that the two institutions demonstrated that they could work side by side without conflict or tension.<sup>93</sup> Schabas also argues that although many Sierra Leoneans did not appreciate the distinction between the TRC and SCSL, what was significant is that the people understood that the institutions were working towards accountability for the atrocities suffered during the war. He suggests that the failure of the people to grasp the distinctions between the two institutions did not represent a significant problem.<sup>94</sup>

This could have been because while the SCSL Prosecutor began to issue indictments in March 2003, actual trials only began in June 2004 at which point, the TRC's work was nearly complete.<sup>95</sup> This certainly will not be the case in Uganda, as the ICC has already issued five indictments; the ICD has begun its first trial, while a truth telling process is still an idea.<sup>96</sup> It is therefore very important that these institutions during their operations ensure that Ugandans understand and that there is no confusion about the different roles and functions. The institutions should also ensure that Ugandans clearly understand the purpose of investigations, hearings and statement taking by the different mechanisms and consequences as relates to each institution.

Another area of concern will be information sharing between the different Institutions that potentially will deter perpetrators and witnesses from sharing information with a truth

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<sup>91</sup> Truth and Reconciliation Act of Sierra Leone art 2.

<sup>92</sup> WA Schabas, 'A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone', in WA Schabas & S Darcy (eds) *Truth Commissions and Courts: The Tension between Criminal Justice and the Search for Truths* (2004) 191.

<sup>93</sup> WA Schabas 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone (2003) 25(4) *Human Rights Quarterly* 1035.

<sup>94</sup> As above.

<sup>95</sup> Schabas (n 92 above) 190.

<sup>96</sup> The Constitutional Court of Uganda ordered the ICD to cease the first trial of its first case and the ICC indictees are at large.

commission out of fear that the ICD or the ICC will use such information against them or others. The working bill provides that:

The Forum shall have the discretion to grant use immunity from prosecution so that testimony given before any forum or statements given to a forum investigator cannot be used against that witness in a subsequent criminal proceeding as evidence. Provided that use immunity shall not prevent the Office of the Prosecutor using such statements to develop leads or for background purposes in developing criminal cases or establish the crime base in cases of war crimes and crimes against humanity.<sup>97</sup>

This provision may discourage potential witnesses from giving testimony to a commission due to fear of incriminating themselves or simply fear of being required to give evidence in Court. In Sierra Leone, the TRC publicly stated that it would not share confidential information with the SCSL and the SCSL Prosecutor on his part stated that the Court would not use evidence presented by the TRC.<sup>98</sup> There are disagreements among commentators on the impact of this. While William Schabas argues that the willingness of perpetrators to participate in truth telling processes has little to do with threat of criminal prosecutions or the promise of amnesty,<sup>99</sup> Tim Kelsall argues that the presence and work of the SCSL was a factor deterring witnesses from giving testimony before the TRC.<sup>100</sup> Schabas argument can find support in the fact that while only a small number of perpetrators testified before the TRC, other truth commissions that functioned with no threat of prosecution were no more successful in persuading perpetrators to testify.<sup>101</sup>

Prosecutions and truth telling processes in Uganda will nonetheless have to operate side by side. A truth commission should not withhold important information critical to the prosecutions in the performance of its functions but it should make use of its discretion not to divulge information that could for instance, could be obtained by a court from another source. The current international court practice of ordering disclosure from states can

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<sup>97</sup> Working bill part V(D)(8).

<sup>98</sup> A Tejan-Cole, 'The Complementary and Conflicting Relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission' (2002) 5 *Yearbook of International Humanitarian Law* 326.

<sup>99</sup> Schabas (n 92 above) 192.

<sup>100</sup> T Kelsall, 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone', (2005) 27 *Human Rights Quarterly* 361, 381.

<sup>101</sup> Schabas (n 89 above) 167.

provide guidance on information sharing, where it must be shown that the information is relevant and necessary to the fair determination of a case and that the request for information be specific so as not to be unduly onerous on a state<sup>102</sup> or a truth commission, in this case.

Closely related to the above, it is necessary that members of a truth commission and staff be granted immunity from testifying in proceedings before the ICD or the ICC during and after the completion of their work, so that witnesses who give confidential information have the assurance that their confidentiality will be respected. The working bill makes a provision that:

Every representative and every staff member of the Forums shall keep in strict confidence any information, which comes to his or her knowledge by virtue of their office or association with the forums, and shall take an oath or affirmation of that duty.<sup>103</sup> The Forum shall not release or communicate any of the information it acquires during the course of its existence to any individual or institution except as is necessary to carry out its mandate.<sup>104</sup>

These provisions are very important and allow the TRC and formal prosecutions to function autonomously without being drastically affected by each other's operations.

Another related issue is whether persons being prosecuted can give testimony to a truth commission. The working bill does not restrict members from taking testimony from anybody<sup>105</sup> and that should extend to persons indicted both nationally and internationally to give the TRC room to fulfil its mandate of creating an impartial historical record,<sup>106</sup> which will require testimony from not only from victims and witnesses but also perpetrators. In Sierra Leone, several detainees of the SCSL, including Sam Hinga Norman of the Civil Defence Forces (CDF), Augustine Gbao, and Issa Sesay of the Revolutionary United Front (RUF) approached the TRC about giving public testimony. This request provoked the only

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<sup>102</sup> M Wierda et al; 'Exploring the Relationship between the Special Court and the Truth and Reconciliation Commission of Sierra Leone' (2002) *The International Centre for Transitional Justice* 3; Rules of Procedure and Evidence of the International Criminal Court for the former Yugoslavia, rule 54 bis.

<sup>103</sup> Working bill part V (D)(7)(a).

<sup>104</sup> Working bill part V(D)(7)(b).

<sup>105</sup> Working bill part III(A)(1) extends the jurisdiction of the truth process to all nationals and all atrocities committed within the geographical limits of Uganda.

<sup>106</sup> Wierda et al., (n 102 above) 3 - 4.



public tension between the institutions. While the TRC intended to receive testimony from the detainees, the SCSL Prosecutor opposed public testimony. The matter was brought for determination before a Trial Chamber of the SCSL by detainee Sam Hinga Norman and the TRC.

Judge Bankole Thompson, in his decision, refused the request to conduct a public hearing of the detainee in the interest of justice and to retain the integrity of proceedings before the SCSL. The Judge was careful to point out that the TRC Act allowed the TRC to receive testimony from victims, witnesses; perpetrators and that none of the categories properly defined an accused.<sup>107</sup> This point should be carefully considered in a founding legislation of a truth commission in Uganda to avoid such collision. On appeal, Justice Robertson reached a common ground, allowing the accused to give private rather than public testimony to the TRC;<sup>108</sup> the accused then, refused to cooperate with the TRC after having been deprived of a public platform.<sup>109</sup>

As demonstrated above, a TRC and formal prosecutions can co-exist in Uganda, as was the case in Sierra Leone. All potential issues of conflict and perception can be sorted out by careful drafting of founding legislation. In addition, during operations, regular meetings between liaison staff of the different institutions should be encouraged to ensure smooth interactions of the institutions.<sup>110</sup> A robust outreach programme categorically stating the different functions and roles of the processes, purpose of evidence collected and a clear spell of confidentiality guarantees will iron out negative perceptions. In addition, the mechanisms would benefit a great deal from collaborating in outreach efforts to provide opportunity to explain their distinct and autonomous nature, while at the same time avoiding contradictions and rivalry and enhancing confidence in all processes. The success of

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<sup>107</sup> *Prosecutor v Sam Hinga Norman* Case No. SCSL.2003.08.PT, Decision on Request by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Sam Hinga Norman JP (29 October 2003) SCSL Trial Chamber para 3.

<sup>108</sup> *Prosecutor v Sam Hinga Norman*, Case No. SCSL.2003.08.PT Decision on Appeal Chamber by the Truth and Reconciliation Commission (TRC) of Sierra Leone and Sam Hinga Norman JP Against the Decision of his Lordship, Mr. Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to Hold a Public Hearing with Sam Hinga Norman JP (28 November 2003) SCSL Appeal Chamber para 47.

<sup>109</sup> Schabas (n 92 above) 48.

<sup>110</sup> Wierda et al., (n 102 above) 19.

the institutions above all will depend on the high calibre of officials and staff and their ability to deal wisely with challenges that will inevitably arise.<sup>111</sup>

## 8.6 Reparations

The working bill defines reparations as any remedy or any form of compensation, symbolic or ex-gratis payment, restitution, rehabilitation or recognition, reconciliation, satisfaction or guarantee of non-repetition made in respect to victims<sup>112</sup> in effect encompassing the definition as enumerated in the Van Boven Principles. The government has made some timid effort towards compensation, specifically through the Acholi War Debt Claimants Association, a victim lobby group advocating for comprehensive compensation for the loss of human life, livestock and other property destroyed during the war, created in 2005. This body and the government reached an out of court settlement, where the government agreed to pay 38 trillion shillings for property lost during the war due to government action. So far, the government has only 2.1 billion.<sup>113</sup> There is a further and huge need for a coherent reparations plan for the millions of victims of the LRA conflict that could be implemented through a truth commission.<sup>114</sup>

The working bill in part II(C)(1) enumerates the functions of the truth commission, which includes making recommendations for reparations. The truth commission is tasked with making recommendations to the government and other actors with regard to the most appropriate modalities for implementing a regime of reparations and rehabilitation. These must take into account the needs of victims and perpetrators for psychosocial or other rehabilitative services.<sup>115</sup> Victims groups have identified categories of serious violations that they believe should trigger the right to reparations. These includes; killing, torture or cruel, inhuman or degrading treatment, abduction, slavery, forced marriage, forced recruitment, mutilation, sexual violence, serious psychological harm and forced displacement. Pillage,

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<sup>111</sup> As above.

<sup>112</sup> Working bill part I(B)(18).

<sup>113</sup> See [http://savenorthernuganda.org/about\\_us.html](http://savenorthernuganda.org/about_us.html) (assessed 1 March 2012); several victims are dissatisfied with this compensation that has been limited to cattle lost during the war. The victims state that while they lost hundreds of herds, they have been compensated for the loss of one or two cattle now.

<sup>114</sup> Government Compensation to Acholi War Claimants not Enough' the Daily Monitor 23 Nov 2011.

<sup>115</sup> Working bill part III (B)(13).

looting and destruction of property were also indiscriminate and committed by both the UPDF and the LRA without any due regard to IHL and IHRL.<sup>116</sup> Most central in this is the loss of land that the government seized to create military facilities and IDP camps, for which, the people have not received compensation.<sup>117</sup> In addition, politicians and other persons connected to the government are said to have taken by force land belonging to the local populace without any compensation.<sup>118</sup>

The working bill however, does not clearly state the government's responsibility in terms of funds for reparations; other sources for funds or guidelines on how to go about securing funds for reparations.<sup>119</sup> It is left for a truth commission to make recommendations on the appropriate measures.<sup>120</sup> The mandate to make recommendations on reparations is best carried out by a truth commission, given that in the course of its work, a truth commission can define and compile information about victims. This is a very important step in the design and implementation of reparations programmes otherwise; such vital information may be missing. For example, in Colombia, discussions about reparations took place without much information about the number of victims, their socio-economic profile or even their location.<sup>121</sup> Colombia's plan relied on judicial determinations for individual, collective, or symbolic reparations, in accordance to the law.<sup>122</sup> In other words, the burden of seeking reparations was on the victims who had to present claims before courts and could only receive reparations after establishing responsibility for and circumstances surrounding the

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<sup>116</sup> Uganda Human Rights Commission (UHRC) & United Nations Office of the High Commissioner of Human Rights (UNOHCHR) *"The Dust has not yet Settled" Victims View on a Right to Remedy and Reparations: A Report from the Greater North of Uganda* (2011) XII; for further details on international crimes perpetrated in the LRA conflict, see discussion in chapter two.

<sup>117</sup> UHCR & UNOHCHR (n 116 above) XVI; in addition details that Karamojong cattle raiders are said to have taken advantage of the situation including the lack of protection afforded by the government to kill, rape and loot properties of people in the war affected region.

<sup>118</sup> Discussions with several people resident in Northern Uganda.

<sup>119</sup> As much as I opined in the previous chapter that the government must not get involved in providing compensation for cases handled through traditional justice processes as it may tarnish the credibility of the process; the government must be the central contributor for compensation and other reparation award recommended by the truth commission.

<sup>120</sup> The Commission is expected to make recommendations on appropriate reparations programme that will be implemented at the end of its mandate, perhaps by another institution.

<sup>121</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Rule-of-Law Tools for Post-Conflict States: Reparations Programmes' (2008) 11.

<sup>122</sup> L J Laplante & K Theidon, 'Transitional Justice in Times of Conflict: Colombia's Ley de Justicia Y Paz' (2007) *University of Michigan Law School* 95; referring to art 8 of Justice and Peace Law of Columbia, 975 of 22 July 2005.

human rights abuse, a great weakness in the Columbia law. In contrast, by the time South Africa TRC published its report, including its recommendations on reparations, it had collected a large amount of information about the potential beneficiaries.<sup>123</sup>

The working bill further, intends the membership in a truth commission to include civil society representatives and since JLOS is undertaking a nationwide consultative processes leading to policy, legislation and design of the institution. It follows that the truth commission may enjoy a very high degree of moral capital, and this might have a positive impact on how its recommendations generally and particularly on reparations are perceived and implemented. Nevertheless, truth commissions, even those with high moral capital, are not necessarily strong political players over time. The temporary nature of the institution means that, unless specific provisions are made in advance, there may be little or no follow-up on their recommendations, including those on reparations.<sup>124</sup>

In addition, recommendations of truth commissions are not usually binding on states; therefore, governments may ignore them, and even where they were binding, implementation is not guaranteed. For example, as much as El Salvador's Truth Commission did not propose a reparations plan as such, it did make a few concrete recommendations, including dedicating 1% of foreign assistance to reparations, which the government ignored. Guatemala's Commission for Historical Clarification made ambitious recommendations for reparations which were also ignored by the government.<sup>125</sup> Moreover, some governments only partially implemented recommendations on reparations by truth commissions, for example in South Africa, a committee focused on reparations and rehabilitation featured the importance of reparations as an integral part of South Africa's reconciliation and transition project.<sup>126</sup> The Reparations and Rehabilitation Committee (RRC), was tasked to identify victims; seek victim's input regarding the type of reparations to be adopted; and to design and recommend reparations program to the government, to be implemented via

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<sup>123</sup> OHCHR (n 121 above) 11.

<sup>124</sup> OHCHR (n 121 above) 11.

<sup>125</sup> OHCHR (n 121 above) 12.

<sup>126</sup> CJ Colvin 'Overview of the Reparations Programme in South Africa', in P de Grieff (ed), *A Handbook on Reparations* (2006) 176.

legislation.<sup>127</sup> Although it was noted that reconciliation was not possible without reparations, the RRC was not as visible like the amnesty and reconciliation committees and it did not have an independent budget except for a small amount used for emergencies like medical attention for those who testified at the TRC's hearings.<sup>128</sup>

In the performance of its role, the RRC was criticised for not being adequately inclusive and participatory.<sup>129</sup> For instance, truth telling and reparations were linked and that meant that only those who were able or prepared to approach the TRC to give testimony benefited from financial compensation. Many people were unaware of the implications of not approaching the TRC in relation to receipt of compensation, poor people in rural areas who lacked information and education on these issues were particularly affected. It is very likely that many female victims of sexual violence were unable to approach the TRC because of stigma, fear, unwillingness to re-live tragedies and a range of related reasons.<sup>130</sup>

In addition, the Promotion of National Unity and Reconciliation Act, which authorised the South African TRC, included no requirements for reparations from perpetrators or beneficiaries of apartheid. The Act did not call for reparations directly from perpetrators to victims even though under the traditional system, *ubuntu*, an African philosophy of humanity, one who violates community law is required to pay a debt - *ulihlawule*. The Act thus broke this link between the violation and the obligation.<sup>131</sup> In addition, whilst the range of reparations proposed by the RRC was comprehensive, financial compensation was conservative.<sup>132</sup> The TRC recommendations exist in varying degrees of implementation. Community reparations, for example, have not been fully developed by the government

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<sup>127</sup> This was unlike the Amnesty Committee that also had the enforcement power, a weakness in the South African TRC Act.

<sup>128</sup> Colvin (n 126 above) 176.

<sup>129</sup> University of Witwatersrand, 'Traces of Truth: The South African TRC' [http://truth.wvl.wits.ac.za/cat\\_descr.php?cat=4](http://truth.wvl.wits.ac.za/cat_descr.php?cat=4) (accessed 15 Nov 2010).

<sup>130</sup> B Goldblatt, 'Gender and Reparations in South Africa' *International Centre for Transitional Justice and International Development Research Centre* <http://www.ictj.org/static/Africa/SAfrica/SouthAfricaExecsSum.pdf> (accessed 15 Nov 2010).

<sup>131</sup> LS Graybill *Truth and Reconciliation in South Africa: Miracle or Model?* (2002) 6 – 8.

<sup>132</sup> MR Amstutz *The Healing of Nations: The Promise and Limits of Political Forgiveness* (2005) 196 -197; the RRC principle recommendation was that the government should grant all victims monetary reparations and recommended equal financial compensation to all qualified victims regardless of need or level of suffering of 20,000 USD over next six years. In April 2003, the government promised instead to pay 3,900 USD to each of the victim's families. Considering that this amount was intended to serve not just as compensation but also contribute to a better quality of life for survivors, it is a very conservative sum, which is yet to be paid.

because it insists that victims should avail themselves with the existing government services. This has left victims feeling that they were poorly treated.<sup>133</sup>

In Peru, the *Comisión de la Verdad y Reconciliación* (CVR) proposed detailed reparations measures for different types of abuses, including the restitution of rights for political detainees and economic benefits for the disabled, families of those who disappeared, and victims of rape. The President took the necessary step and asked for forgiveness in the name of the state, from all victims, but rejected calls for individual compensation citing Peru's scarce resources. It is therefore not surprising that the victims found the truth telling process and apology insincere.<sup>134</sup>

These experiences show that reparations are often perceived to be a luxury that only affluent states can afford but governments need to appreciate that reparations are a necessity, a matter of legal obligation, and therefore a priority.<sup>135</sup> The key issue is not the financial capacity of the state but rather the strength of political alliances that support reparations. Where political alliances supporting reparations are weak or non-existent, financing for such programs will also be weak or non-existent.<sup>136</sup> How governments develop, speak about and deliver reparations programs generate a context that must be consistent with the overall aims of the reparations. That is, the recognition of the harm suffered and recognition of the humanity of the person(s), individually or collectively affected; building civic trust among citizens and between citizens and the institutions of the state; and promoting social solidarity.<sup>137</sup> One must also bear in mind that, because of their past mistreatment, victims are already sensitive to the rhetoric of governments and politicians and feel excluded from society and the state.<sup>138</sup> The government of Uganda must therefore endeavour to make reparations a reality for the victims.

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<sup>133</sup> Goldblatt (n 130 above).

<sup>134</sup> The International Centre for Transitional Justice (ICTJ) & the International Development Research Centre (IDRC) 'Repairing the Past: Reparations and Transitions to Democracy, Perspectives from Policy, Practice and Academia' *Symposium Summary (Ottawa Canada)* 11 – 12 March 2004 [http://www.ier.ma/IMG/pdf/REPARATIONSsymposium\\_report\\_.pdf](http://www.ier.ma/IMG/pdf/REPARATIONSsymposium_report_.pdf) (accessed 15 Nov 2010).

<sup>135</sup> ICTJ & IDRC (n 134 above).

<sup>136</sup> ICTJ & IDRC (n 134 above).

<sup>137</sup> N Roht-Arriaza, 'Reparations, Decisions and Dilemmas' (2004) *Hastings International and Comparative Law Review* 212.

<sup>138</sup> ICTJ & IDRC (n 134 above).

In addition, governments should resist the temptation to substitute normal development measures for reparations as the link between benefits and abuses is weakened and reparations are undermined. Development is an important factor in establishing sustainable economies, but it is an entitlement of every citizen not because they are victims. Hence, it is imperative that reparations programs preserve the integrity of the link between violations and obligations.<sup>139</sup> Reparations should provide direct remedy to the victims of atrocities that signify public acknowledgement that a state or perpetrator committed violations or abuse and/ or a state's failure to prevent violations and harms and its responsibility to redress these serious violations. However, development efforts should underpin key reparations efforts to help bolster and strengthen reparations. For example, governments could construct roads to enable access to and from more remote and isolated communities that bore the brunt of violence, as was the case in Guatemala. In addition, staffing and rebuilding of schools and health centres in conflict affected areas could be prioritised by national development initiatives as was the case in Peru and the international community could assist in building the capacity of the state to manage and undertake reparations programme as the attempts in Nepal.<sup>140</sup>

The founding legislation must clearly define the duties of the state to make reparations and spell out clearly, that victims can seek compensation from the perpetrators.<sup>141</sup> The legislation should further include a clause requiring reparations to be financed through the state budget, a model used in Argentina, Brazil, and Chile, which has been more effective in procuring the necessary financial resources for reparations.<sup>142</sup> The budget line for reparations should be permanently established to respond to reparations needs that may

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<sup>139</sup> ICTJ & IDRC (n 134 above) stating that in Peru, President Toledo proposed a Peace and Development Plan worth 820 million USD to support reconstruction in the areas most affected by the conflict. This fund isn't specifically linked to the actual abuse suffered therefore its reparatory effect may be extremely limited. The paper further argues that if community reparations and development are simply interchanged, then the program risks losing its individual component, thereby decreasing its ability to recognise individual harm and suffering.

<sup>140</sup> UHCR & UNOHCHR (n 116 above) 19 – 20; see further discussion on government's development effort below.

<sup>141</sup> Joint Principles principle 31.

<sup>142</sup> I Cano & PS Ferreira 'The Reparations in Brazil' in P de Greiff (ed) *A Handbook on Reparations* (2006) 102; E Lira 'The Reparations Policy for Human Rights Violations in Chile' in P de Greiff (ed) *A Handbook on Reparations* (2006) 55; MJ Guembe 'Economic Reparations for Grave Human Rights Violations: The Argentinean Experience' in P de Greiff (ed) *A Handbook on Reparations* (2006) 21.



arise in future. The founding legislation should further require the government to raise additional and separate funds from external donors, well-wishers and other development partners to support its efforts. Any such support from externals should be treated as a separate fund and not replace government's contribution. The fund should be channelled through the national body responsible for implementing reparations.<sup>143</sup>

In addition, provisions on reparations should be informed and sensitive on gender needs to facilitate the effective and meaningful participation of females. Females are more disadvantaged within societies before, during and after war and for socioeconomic, physical and psychological reasons, they experience violations and outcomes differently.<sup>144</sup> The effects and outcomes of particular violations, affects them adversely and differently from males and some forms of violence specifically targets them.<sup>145</sup> Therefore, a reparations programme should consider this and address the disproportionate effects of the crimes and violations on women and girls, their families and their communities.<sup>146</sup>

The Nairobi Declaration that comprehensively provides for a gender-just understanding of the right to a remedy and reparations should be used as the guiding document on any reparations policy in Uganda. In addition, due to stigma, victims of sexual crimes, both males and females are usually reluctant to come forward to claim reparations. The founding legislation should therefore include measures to enable them to come forward even after a formal prescribed period has expired.<sup>147</sup> In addition, trained specialists should be made

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<sup>143</sup> Uganda Victims' Foundation C/o Africa Youth Initiative Network 'Statement on the Need for Reparations and Guiding Principles for Victims of Crimes Perpetrated in Uganda' (6 May 2011) 5.

<sup>144</sup> R Rubio-Marín 'Introduction: A Gender and Reparations Taxonomy in R Rubio-Marín (ed) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (2009) 2- 3.

<sup>145</sup> Several international instruments recognise and reflect in their provisions how violence and other abuses affect girls and women adversely and differently from males for instance the CRC and the two optional protocol on The Involvement of Children in Armed Conflict and the Sale of Children, child Prostitution and Child Pornography; The Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children that Uganda is a party to. In addition, several policy outcomes of intergovernmental processes have reached consensus on this issue, for instance, the Beijing Platform for Action (1995); the Outcome of the Twenty-Third Session of the General Assembly (2000); The International Conference on Population and Development (1994); the World Summit for Children (1990); the Millennium Declaration (2000) that led to the Millennium Development Goals (2005); as well as the various Security Council Resolutions such as Resolution 1325 on Women Peace and Security; Resolutions 1261, 1314, 1379, 1539 and 1612 on Children and Armed Conflict.

<sup>146</sup> Nairobi Declaration on Women's and Girls' Right to Remedy and Reparations 22 May 2007 (Nairobi Declaration) preamble.

<sup>147</sup> Nairobi Declaration clause 3(g).

available to victims of sexual violence to help with administrative procedures necessary to obtain reparations.<sup>148</sup>

Related to the above is the need to, review, reform and educate the public on laws that are gender biased. For instance, customary laws as regards property ownership and inheritance that the vast majority of the population relies on are imbued with gender inequalities. These customary laws discriminate against females and they are used to deny them vital resources like land.<sup>149</sup> In addition, laws defining and establishing parameters of sexual violence as well as the onerous evidentiary burden such as those requiring eye witness corroboration, medical examination and police reports in cases of sexual violence must be reformed.<sup>150</sup> Such reforms shall allow a gender sensitive reparations programme.

Most importantly, the reparations programme should provide an indication to victims and others that the government takes human rights violations and abuses seriously and that the government is determined to contribute to the quality of life of victims. To the extent that reparations programme may become part of a political agenda that enjoys broad and deep support, they might even have a positive impact not just on social trust between citizens and the institutions of the state, but also among citizens.<sup>151</sup> If integrated and implemented within a comprehensive accountability process, reparations might provide beneficiaries with a reason to think that the institutions of the state take their well-being seriously, that they are trustworthy, this in turn will create an environment conducive for reintegration and reconciliation.

## 8.7 Reintegration and reconciliation

As the title of the proposed bill suggests, one of the result of the truth commission is to ensure reconciliation in Uganda.<sup>152</sup> Broadly speaking, the mandate of the forum is to

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<sup>148</sup> UHCR & UNOHCHR (n 116 above) 28.

<sup>149</sup> D Mulumba 'Property Rights and Marginalised Groups in Uganda' a paper presented at the national Consultation Conference: Legal Empowerment of the Power (Nov 2006) 14.

<sup>150</sup> UHCR & UNOHCHR (n 116 above) 24.

<sup>151</sup> OHCHR (n 121 above) 30- 31.

<sup>152</sup> The proposed bill is titled 'The National Reconciliation Bill 2009'.

promote national peace, unity and reconciliation.<sup>153</sup> The working bill comprehensively provides for the promotion of reconciliation. Some of way includes, facilitating and initiating or coordinating enquiries into the history of conflicts;<sup>154</sup> determining the nature, causes and manifestations including violations and abuses of human rights.<sup>155</sup> Identifying those responsible<sup>156</sup> and conducting investigations and holding hearings.<sup>157</sup> Restoring the dignity of victims by giving them the opportunity to provide an account of violations or abuses suffered.<sup>158</sup> Promoting truth telling in communities<sup>159</sup> and seeking assistance from traditional, cultural, religious leaders, foreign governments, individuals and organisations among others to facilitate sessions and resolve local conflicts.<sup>160</sup> Promoting and encouraging preservation of memory and producing a comprehensive final report<sup>161</sup> and making recommendations on the appropriate modalities for reparations and rehabilitation.<sup>162</sup> Designing reconciliation initiatives and conducting symbolic reconciliation activities in collaboration with relevant institutions throughout the nation and encouraging or facilitating inter-communal reconciliation initiatives.<sup>163</sup>

Challenges to reintegration as communities in Northern Uganda move back to the homes of origin are already immense. In 2008, the government issued Camp Phase-Out Guidelines, which included plans for the gradual demolition of abandoned huts as IDPs moved to decongestion camps. The camp phase-out focused exclusively on return without other options for those who were forced to or those who choose to stay in the camps. Majority of those forced to stay are the most vulnerable groups including orphaned children who do not know their original homes, children heading households and could not build huts in their original homes and the elderly.<sup>164</sup> In 2009, the government phased out camps; basic services

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<sup>153</sup> Working bill part III(B).

<sup>154</sup> Working bill part III(B)(1).

<sup>155</sup> Working bill part III(B)(2).

<sup>156</sup> Working bill part III(B)(3).

<sup>157</sup> Working bill part III(B)(4).

<sup>158</sup> Working bill part III(B)(5).

<sup>159</sup> Working bill part III(B)(6).

<sup>160</sup> Working bill part III(B)(7) &(8).

<sup>161</sup> Working bill part III(B)(10), (11) & (12).

<sup>162</sup> Working bill part III(B)(13).

<sup>163</sup> Working bill part III(B)(14).

<sup>164</sup> According to the Durable Solutions Officer of NRC; NRC and other NGOs stepped in to construct houses for some of the vulnerable children who knew their original homes but those who do not have land were left out of this program.

were discontinued and that ensured de facto return. Those who could not leave were left to negotiate a way forward with landowners, with no involvement of government.<sup>165</sup>

According to aid workers and local government officials, the majority of the population in Northern Uganda have returned to their original homestead while others have settled in originally unoccupied land<sup>166</sup> but there are still many scattered groups of vulnerable people, especially children and the old in the camps and live at the mercy of the landowners. Yet, many youth find the transition from life in the camps to life in villages challenging as the majority lack any agricultural skills, which are the main way of life in the villages. This has led to the increase in the number of street children in the larger towns and an increase in the number of robberies, alcohol and drug abuse in the region, a severe impediment to reintegration.<sup>167</sup>

As a measure to ensure return and reintegration after decades of displacement and insecurity, the government and its development partners developed the Peace Recovery and Development Plan (PRDP) and Northern Uganda Social Action Fund (NUSAF) as part of the framework for rebuilding the affected areas, ensure reintegration of the displaced, former abductees, and returned rebels. The first phase of the PRDP was completed but the government extended the implementation to cover 40 districts instead of the original 14 districts affected by the conflict. This was done without any increase in funding and significantly reduced the intended impact of the PRDP in the affected districts.<sup>168</sup> In addition, the PRDP and NUSAF and other programmes of the developmental partners have emphasised construction of schools and health centres without the necessary equipment and personnel to keep them running. As a result, a number of newly built schools and health

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<sup>165</sup> Interview with NRC and UNHCR officials that specifically handled camp management in Northern Uganda.

<sup>166</sup> Land has become a major source of conflict in Northern Uganda; several people have lost claims to clan land that has been taken by the more powerful families and the government, its officials including officials with security organs are cited as the major land grabbers in the region.

<sup>167</sup> Interview with local government officials and staff of civil society organisations including Save the Children in Uganda, the Norwegian Refugee Council and CARITAS conducted in Gulu between 19 to 25 October 2011.

<sup>168</sup> Interview with officials working with the Norwegian Refugee Council; Save the Children in Uganda and local government officials in Gulu district.

centres lie dormant. This creates a further negative impact on the rebuilding and reintegration process.<sup>169</sup>

Several children lost parents during the conflict and have assumed the adult role of heading households and caring for younger siblings – often the children drop out of school to undertake this role. Traditionally, the extended family would step in to take care of such children but due to poverty, families are no longer willing or able to do so, yet, some children lost the extended family in the conflict. There is hardly any data on the number of child headed households in Northern Uganda but according to local government officials, they could be in thousands.<sup>170</sup> These children face a number of difficulties often in securing physical safety, shelter, food, health and education for themselves and their siblings.<sup>171</sup>

Although several of government officials and aid workers interviewed state that stigma has reduced, the formerly abducted and returned rebels say they are subject to stigma and ridicule and several are alienated from family. Families of victims expose many formerly abducted children to potential dangers such as revenge and stigma that keeps them away from school and the villages of their birth; instead, they seek life on the street.<sup>172</sup> A great number of street children in Gulu are formerly abducted children. According to an official with the World Vision, ‘several of the children are traumatised and have behavioural problems including habitual recourse to violence which they use as a survival strategy. This makes it difficult for them to reintegrate into normal life.’<sup>173</sup> As evidence of this ‘at least 70% of juvenile offenders in Gulu prison are formerly abducted children facing charges of rape, defilement, assault, theft and different degrees of robberies.’<sup>174</sup>

Formerly abducted girls face a more precarious situation; many were subjected to forced marriages and have had children as a result. These girls or women and their children usually

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<sup>169</sup> This information was consistent among all interviewees, but, there seems to be no data to show the school and health centre buildings not active.

<sup>170</sup> Discussion with the Probation and Welfare Officer in Pader district conducted on 22 Oct 2011.

<sup>171</sup> John Bosco Oryema, a 15-year-old boy living in the former camp in Acholi Bur with his 4 siblings, gave this information.

<sup>172</sup> A great number of street children in Gulu are former abductees and they cite stigma, ridicule and alienation from families as reason why they left their villages.

<sup>173</sup> Interview with an official at the World Vision Reception Centre in Gulu conducted on 21 Oct 2011; the officer added that there are no reported cases of former abductees or rebels that have been killed.

<sup>174</sup> Information from the Probation and Social Welfare Officer in Gulu district.

have nowhere to go, going back to their families is not always an acceptable option since, according to the patrilineal societies in Northern Uganda; children belong to their fathers. The culturally appropriate place for female returnees with children is to resettle in communities of the father of their children but several of these men are still active with the LRA. The women may be unaware of the villages and where they know, the women may not be recognised as 'wives' or/and their children recognised as belonging to the family and clan. There is a general reluctance to accept children born in the 'bush' or due to war time rape into lineages, especially so, as it will give these children claims over clan lands.<sup>175</sup> In addition, gendered hierarchies have been flaunted and those who can have demanded and continue to demand various kinds of recompense. Ownership of property, especially land will be bitterly contested and will divide families as already evidenced; a large number of children and young adults born in the 'bush' or out of war time rape have not be accepted into clan lineages.<sup>176</sup>

At the national level, there is also a need to overcome ethnic, religious and regional divisions and tension dating back to the colonial era and has been cited as a major cause of for the LRA conflict.<sup>177</sup> At the start of his rule, President Museveni and the NRM embarked on an ambitious program of popular inclusion that aspired to transcend all divisions and promised fundamental change in the politics of the country.<sup>178</sup> Like his predecessors, he has so far failed at the process of national integration and there are now serious doubts about the ability or desire of the NRM government to resolve longstanding antagonisms and divisions.<sup>179</sup>

The once promising democratic transition has weakened and power has become increasingly centralised and concentrated in the President's hands. Power plays by President Museveni have included the removal of constitutionally mandated term limits to allow him

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<sup>175</sup> T Allen *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (2006) 171.

<sup>176</sup> Allen (n 176 above) 171 – 172.

<sup>177</sup> See further discussion contained in the introductory remarks in chapter one.

<sup>178</sup> International Crisis Group 'Uganda: No Resolution to Growing Tension' Africa Report No 187 (5 April 2012) 7; referring to YK Museveni 'Ours is a Fundamental Change' in YK Museveni (ed) *What is Africa's Problem? Speeches and Writings on Africa* (1992) 21; YK Museveni (1985) *Selected Articles on the Uganda Resistance War* 46; the initiatives the government introduced to solve the longstanding divisions and broaden NRM support included the national 'no party' structure, broad based government and a process to adopt a constitution through extensive popular consultations.

<sup>179</sup> International Crisis Group (n 178 above) 8 -9.

unlimited term in office and the arrest of political opponents prior to elections and increasing harassment and intimidation of political opponents. State policies have created a more personal, patronage based, executive centred, and military reliant regime. Many of the state policies enrich the President's inner circle, intensifying resentment.<sup>180</sup> Popular protests are on the rise every day, for instance the 'walk to work' protest that started after the re-election of the President in 2011, ostensibly over the rising cost of living but clearly directed at Museveni's rule, continue in Kampala and other urban centres despite a violent crackdown. These frequent demonstrations and violent crackdowns by the government indicate that many sectors of the society are deeply dissatisfied and the government's methods of resolving the dispute are far from satisfactory.<sup>181</sup>

Further, Uganda confirmed significant oil reserves, predominantly located in the Lake Albert region in the border with the DRC (estimated at 2.5 billion barrels) for commercial extraction in 2006, that many fear is a curse rather than a blessing as it may become an additional source of division.<sup>182</sup> If extracted, these resources would put Uganda among the top 50 world oil producers, which could be quite a boom for Uganda doubling or tripling its current export earning but it is also likely to exacerbate social and political tension. The oil may ensure President Museveni's control by enabling him to consolidate his system of patronage and will increase corruption. If President Museveni gains access to substantial oil revenue, the combination of considerable oil funds and strong presidential powers could increase the ability of his government to remain in power indefinitely.<sup>183</sup>

Indeed, President Museveni is reported to have categorically stated that, he discovered the oil and that it is his duty to ensure that it benefits all before he leaves power. This is a ploy to secure a life presidency that can only be sustained through an expensive patron-client system, and the construction of a state security machinery to intimidate and harass those

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<sup>180</sup> International Crisis Group (n 178 above) 1.

<sup>181</sup> International Crisis Group (n 178 above) 1.

<sup>182</sup> The fears that abundant natural resources are a curse are unscientifically drawn from Nigeria, Sierra Leone, the DRC and Sudan among others that have all experienced at one time or another different levels of armed conflicts due to poor institutional and governance quality that allows national elites to become corrupt and give maximum advantage to foreign mining companies to reap huge profits.

<sup>183</sup> J Kathman & M Shannon 'Oil Extraction and Potential for Domestic Instability in Uganda' (2011) 12(3) *African Studies Quarterly* 27.



who dare to oppose or question government dealings.<sup>184</sup> This inevitably will involve an increase in corrupt behaviour and a reduction in government transparency in oil and tax revenue management that can only be accomplished through an increasing autocratic relationship with the public and political opponents. This unfortunately is a reality that Uganda will face as already witnessed through the October 2011 parliamentary revolt over the lack of transparency in oil contracts and alleged resulting large payment in bribes to government ministers.<sup>185</sup>

In addition, the Lake Albert region is an ecologically sensitive area with an enormous amount of biodiversity, if not properly managed; oil extraction could lead to environmental degradation that could lead to local strife.<sup>186</sup> Further, there are indications that social unrest could be on the rise in the region. As news of the oil deposits has spread, large numbers of people from outside the region have begun to move into areas that they expect to be rich in oil with the goal of obtaining oil rents from the government. This had generated animosities among the Banyoro people who are the longstanding inhabitants of the region on the Ugandan side of Lake Albert. In addition, given that the oil reserves were discovered under what is largely Bunyoro land, the Bunyoro kingdom has called for a greater share of oil revenues as compensation for hosting the oil extraction infrastructure. Yet, such an agreement is likely to exacerbate the existing ethnic and regional conflict and produce further unrest due to migration to the oil rich region.<sup>187</sup>

The foregoing clearly shows that it is dangerous to assume that reintegration and reconciliation will be an easy process in Uganda. On the contrary, it will be a long, painful and difficult process and violent incidences can be anticipated. The success of the process

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<sup>184</sup> W Okumu 'Uganda May Face an Oil Curse' Africa Files 1 June 2010.

<sup>185</sup> See for instance; 'Top Ministers took Bribes from Tullow Oil – Parliament Told' the Independent 11 Oct 2011; 'Oil Bubble Burst' the Monitor 11 Oct 2011; 'MPs Demand Halt in Government Oil Deals Citing Bribery' the Monitor 11 Oct 2011; Kutesa and Onok Willing to Step Aside, Mbabazi Stays Put' the Monitor 12 Oct 2011; 'Here is What is at Stake with Uganda's Oil' the Monitor 12 Oct 2011; 'Accused Ministers Deny Corruption' the Monitor 12 Oct 2011; 'MPs Order Ministers to Resign over Alleged Oil Bribes' 12 Oct 2011; 'MPs Collect Signatures to Censure Ministers Named in Saga' the New Vision 12 Oct 2011; 'Oil Saga – Museveni Speaks Out' the New Vision 12 Oct 2011.

<sup>186</sup> Kathman & Shannon (n 183 above) 24.

<sup>187</sup> Kathman & Shannon (n 183 above) 29 – 30; in addition, the Lake Albert region is a politically sensitive area that lies between Uganda and the DRC that have had a violent history and border disputes. In addition, the region has also been vulnerable to rebel activities for instance the ADF in the 1990s and the LRA after the failure of the Operation Iron Fist in 2002. For more, see introductory remarks in chapter one

will largely depend on a political will and readiness to overcome social, political, ethnic and regional divisions. Nonetheless, the recognition that grave wrongs have been committed in the past, that people have been severely victimised and that individuals, groups and institutions have been identified as perpetrators underlines a new moral regime and gives victims confidence required for their re-entry into civic processes of negotiation.

In addition, truth telling, acknowledgment and coming to terms with the past are necessary for societal recovery, reintegration and provide the best ground for reconciliation. It is however, unwise to assume that these will automatically lead to reconciliation. The lesson from South Africa is very instructive for Uganda in this regard. One major critique of the South African TRC was though the South African were far from satisfied, the TRC lectured that South Africans had forgiven perpetrators and were reconciled.<sup>188</sup> Reconciliation is not an event but a process and the work of the TRC is just the beginning of such a process that may take several years to come.

## 8.8 Conclusion

A truth telling process that ensures equality and non-discrimination in investigation and reparations processes; that puts in place support structures to assist and protect the safety of victims and witnesses and ensures their participation in all related processes;<sup>189</sup> presents Uganda with a great opportunity. An opportunity to know the truth about the many armed conflicts that Uganda has suffered; an opportunity to amend wrongs through reparations and prosecutions and an opportunity to clear the path for institutional reform to ensure non-reoccurrence of conflicts and mass atrocities. This process must allow a victim and civil society lead and participation in policy and legislation design and in the implementation, monitoring and evaluation of the processes. In addition, there must be a political will to

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<sup>188</sup> See for instance Nahla Valji, 'Race and Reconciliation in a Post-TRC South Africa' A paper presented at a conference entitled, *Ten Years of Democracy in Southern Africa* (May 2004) Organised by the Southern African Research Centre and Queens University.

<sup>189</sup> This should include the development of flexible reparation processes to enable the most vulnerable victims, such as survivors of sexual violence and children born out of war time rape to have access to reparations. This will include the availability of trained female investigators and health workers; flexible evidentiary standards that ensures that victims are not stigmatised and endangered further and urgent interim reparation measures such as medical, psycho-social support and education opportunities for victims.

ensure sincere participation of government and security institutions as well as politicians and other officials individually and collectively in the process.

It is also important to note early in the process that Ugandans are weary of empty political promises, therefore this time the government must ensure that promises are turned into deeds to give citizens confidence in the state. Also important is that although guns have been silent for a while, the peace in Northern Uganda is illusory and could be shattered any moment, thus creating a sensitive environment that may be hostile to a truth telling process. Therefore, victims and witnesses have to be given adequate protection so that their involvement and participation in the truth process does not endanger them any further. The truth telling institution should also remember that seeking truth for atrocities committed over a period of two decades would not be easy as those who may have committed grave crimes attempt to hide their complicity and physical truth may be eroded or destroyed, requiring sustained technical support and oversight from international partners in the investigation and reparations processes.

A political will and commitment, sustained funding from government and additional technical and financial support from development partners, together with more robust local consultations, will ensure local ownership, credibility and legitimacy of a truth commission. If members selected have the desired integrity, experience and selection ensures regional and gender balance, the working bill with amendments as recommended in this chapter will go a long way in ensuring the desired goal of truth, justice and reparations paving way to institutional reform and reconciliation in Uganda.